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12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA

14 Mordechai Avisar, an individual,

15 Plaintiff,

16 v.

17 Surgical Theater, Inc., Wen-Chi
18 Chen and DOES 1 through 10,
19 inclusive,

20 Defendants.

CASE NO.: 8:23-cv-00211-JWH(ADSx)

FIRST AMENDED COMPLAINT FOR:

1. **Whistleblower Retaliation in Violation of Labor Code §1102.5;**
2. **Retaliation in Violation of Labor Code §232.5;**
3. **Wrongful Termination in Violation of Public Policy;**
4. **Intentional Interference with Prospective Economic Advantage;**
5. **Conversion;**
6. **For Penalties Pursuant to California Penal Code 496; and**
7. **Breach of Bailment.**

DEMAND FOR JURY TRIAL

1 Plaintiff Mordechai Avisar (“Plaintiff”) alleges as follows:

2
3 **INTRODUCTION**

4 1. Plaintiff Mordechai Avisar brings this Complaint to recover damages that
5 are owed to him by Defendant Surgical Theater, Inc. (“Defendant”), as a result of
6 Defendant Surgical Theater, Inc.’s violations of California law prohibiting retaliation
7 against whistleblowers (California Labor Code §1102.5), for wrongful termination in
8 violation of public policy, and for conversion and breach of bailment. Plaintiff also brings
9 the Fourth Cause of Action in this Complaint, for intentional interference with contract, to
10 recover damages owed to him by Defendant Wen-Chi Chen. Plaintiff seeks damages in
11 this lawsuit in excess of \$18 million.

12
13 **THE PARTIES**

14 2. Plaintiff Mordechai Avisar (“Avisar” or “Plaintiff”) is a citizen of the
15 United States and a citizen and resident of Miami Beach, Florida. Until in or around
16 August 2022, Avisar was the Chief Executive Officer of Defendant Surgical Theater, Inc.
17 During his employment with Surgical Theater, Inc., Plaintiff maintained a residence first
18 in Los Angeles County, California, and later in Orange County, California. Plaintiff
19 routinely performed work for Surgical Theater at these residences. At the time of his
20 termination, Avisar regularly worked in Los Angeles and Orange County, California.
21 Plaintiff’s work included both working from his residences and working in company
22 offices, as well as the Surgical Theater manufacturing facility located in Los Angeles
23 County.

24 3. Defendant Surgical Theater, Inc., produces and globally distributes a
25 three-dimensional advanced visualization and image guidance platform for brain surgery
26 and patient consultation. Surgical Theater products have been deployed in clinical
27 settings at multiple hospitals including UCLA Medical Center, UCSF Medical Center, and
28 Stanford Hospital.

1 4. Defendant Surgical Theater, Inc. is a corporation organized under the laws
2 of Delaware and located in Ohio. Until the summer of 2022, Surgical Theater maintained
3 a California headquarters office in Los Angeles, California. During the time that Surgical
4 Theater conducted in-person board meetings, the Los Angeles office was a regular site for
5 board meetings. Plaintiff negotiated the terms of his employment in the Los Angeles
6 office. Surgical Theater's manufacturing facility also operated in Los Angeles from 2016
7 through the summer of 2022. Several of Surgical Theater's senior officers also reside or
8 resided in Southern California through the summer of 2022. Since 2019 and continuing to
9 the present, Surgical Theater's primary clinical research and development work takes
10 place on the campus of Hoag Hospital in Orange County, California.

11 5. At all times relevant herein, Defendant Wen-Chi Chen ("Chen") has been a
12 director on the board of directors of HTC Corporation and the chairman of the board of
13 directors of Surgical Theater, Inc. Chen is also on the board of trustees of the California
14 Institute of Technology ("Cal Tech"), and has extensive ties to the University of
15 California at Berkeley. Chen also serves as the chairman and CEO of VIA Technologies,
16 Inc., which was founded and continues to perform business in California. Chen also
17 controls Kun Hung, a personal money management firm that manages Chen's own funds.
18 Kun Hung has profited from dealings with Surgical Theater to the detriment of Surgical
19 Theater.

20 6. Plaintiff is currently unaware of the true names and capacities of the
21 Defendants sued herein as Does 1 through 10 (the "Doe Defendants"), and therefore sues
22 the Doe Defendants by such fictitious names. Plaintiff will amend this Complaint to
23 allege the true names and capacities of the Doe Defendants when they are ascertained.

24 7. Plaintiff is informed and believes, and thereon alleges, that the Doe
25 Defendants are the partners, agents, principals or co-conspirators of the named Defendants
26 and of each other; that the named Defendants and the Doe Defendants performed the acts
27 and conduct herein alleged directly, aided and abetted the performance thereof, or
28

1 knowingly acquiesced in and accepted the benefits of such conduct, and therefore each
2 Doe Defendant is liable to the extent of the liability of the named Defendants.

3 8. Plaintiff is informed and believes, and on that basis alleges, that at all times
4 herein mentioned, each of the Defendants was the agent, servant, and/or employee of each
5 of the other Defendants and, in connection with the matters hereinafter alleged, was acting
6 within the scope of such agency and employment, and each Defendant ratified each and
7 every act, omission and thing done by each and every other Defendant herein.

8 9 **JURISDICTION AND VENUE**

10 9. This Court has jurisdiction in this action because: Defendants committed
11 violations of California law that affected Plaintiff in this state, because the cause of action
12 arose in California, and because service was effected on Defendants while they were
13 voluntarily present in California.

14 10. Venue is proper under California Code of Civil Procedure §393, as this is
15 the county in which the cause arose; and under Section 395, as this is the county in which
16 the injury occurred, and none of the defendants reside in the State of California.

17 11. Defendant Surgical Theater removed this matter from the Superior Court of
18 California to the above-captioned Court on February 2, 2023 pursuant to 28 U.S.C.
19 §1332(a), on the basis of diversity of citizenship between Plaintiff and Defendants.

20 21 **GENERAL ALLEGATIONS**

22 12. Plaintiff realleges and incorporates herein by this reference the allegations
23 of Paragraphs 1 through 11 hereof, inclusive.

24 13. Plaintiff co-founded Surgical Theater in 2010, and served as the CEO from
25 that time until approximately August 2022.

26 14. Surgical Theater's largest shareholder is HTC Corporation ("HTC").
27 With regards to Surgical Theater, HTC is represented by Defendant Wen-Chi Chen
28 ("Chen").

1 15. In or around 2017, HTC, through Chen, entered into an exclusive
2 distribution agreement with Surgical Theater. Under this agreement, HTC would have
3 the exclusive rights to market and distribute Surgical Theater's products in East Asia.

4 16. As an equity investor in Surgical Theater, and after gaining board seats and
5 becoming the chairman of the Surgical Theater Board of Directors, Chen began taking
6 actions aimed at promoting his own interests and the interests of HTC at the expense of
7 Surgical Theater shareholders. Chen stated on multiple occasions that he put his own best
8 interests and the interests of HTC above the interests of Surgical Theater.

9 17. Chen bargained for HTC to acquire exclusive rights to market and distribute
10 Surgical Theater products in the East Asia territory. Chen also forced Surgical Theater to
11 grant HTC a 2-year option to acquire Surgical Theater's intellectual property in East Asia.

12 18. Having obtained exclusive rights to the marketing and distribution of
13 Surgical Theater products in East Asia, HTC, acting at Chen's direction, refrained from
14 generating any sales of revenue in the East Asian territory. The fact that zero dollars were
15 generated in East Asia over the period of seven years was remarkable, as Surgical Theater
16 had generated at least \$30 million in revenue globally over the previous few years.

17 19. This conduct by Chen caused significant damage to Surgical Theater in lost
18 revenue. Plaintiff is informed and believes that Surgical Theater's value would have been
19 three times higher had Chen directed and permitted HTC to follow through with its
20 obligation to market and sell Surgical Theater's products in East Asia. In addition to the
21 damages caused to Surgical Theater's shareholders, Chen's conduct also significantly
22 impacted Surgical Theater employees, such as Plaintiff, who were entitled to receive
23 bonuses associated with the company's revenue, and whose bonuses were negatively
24 affected by Chen and HTC's failure to generate any revenue in East Asia.

25 20. After more than six years passed with HTC having generated no sales or
26 revenue in the East Asian territory, HTC's option to acquire Surgical Theater's
27 intellectual property in East Asia expired. Despite this fact, Chen and HTC worked to
28 extend the exclusive agreement in order to thereby block any possibility of sales or

1 revenue from the East Asian territory. Chen continued to advance this position, to the
2 detriment of Surgical Theater shareholders, even after the board of Surgical Theater
3 concluded that the exclusive agreement with HTC had expired. Chen undertook this
4 strategy specifically to depress the value of Surgical Theater so that he could acquire
5 additional ownership interest more cheaply.

6 21. During 2021 and 2022, Chen deliberately created a cash shortage at Surgical
7 Theater by failing to keep promises regarding provision of an additional cash infusion to
8 the company.

9 22. Having created a situation in which Surgical Theater faced a real risk of
10 being unable to meet payroll expenses (including payroll for employees in California for
11 which the company nearly defaulted), Chen offered Surgical Theater a \$250,000 loan to
12 cover payroll, in exchange for a warranty with approximate value of \$10 million from
13 Surgical Theater. Chen also demanded that Surgical Theater take responsibility (in lieu of
14 HTC) for the failure to generate sales and revenue in East Asia. Chen's actions in this
15 regard constituted self-dealing, as Chen sought to benefit from a crisis at the expense of
16 shareholders and to communicate false information to shareholders with regard to the
17 reason for the failure to generate sales and revenue in East Asia.

18 23. Plaintiff is informed, believes, and thereupon alleges that one or more
19 Surgical Theater board members, guided by Chen, instructed management to manipulate
20 the shareholder report presented at a September 2022 shareholder meeting so as to
21 misrepresent the revenue numbers for 2021. The inaccurate report stated \$6 million in
22 company revenue instead of the \$9 million shown on the company reports. Chen took this
23 action in order to set a value for the company that was significantly lower than the fair
24 market value that was determined by the company's retained investment bankers.

25 24. Having worked to depress the value of Surgical Theater, Chen made
26 multiple offers for the acquisition of Surgical Theater that contradicted, and were
27 significantly lower than, the valuation provided by the company's retained investment
28 banker consultants.

1 25. In 2022, Plaintiff received information that alleged that Chen, and VIA
2 Technologies, Inc., for which Chen served as Chairman and CEO, were ordered in Hong
3 Kong and Taiwanese arbitrations to pay millions of dollars for manufacturing computer
4 chips with hidden backdoor vulnerabilities purportedly to allow the Chinese Communist
5 Party illicit access to information by using the chips. Plaintiff also learned that Chen,
6 VIA, and HTC were alleged to have ties to Libya.

7 26. Hong Kong and Taiwan are part of the East Asia territory for which HTC
8 was granted exclusive marketing and distribution rights by Surgical Theater.

9 27. Chen and HTC never disclosed the Hong Kong/Taiwanese arbitrations or
10 their findings to the board or shareholders of Surgical Theater. When confronted with the
11 allegations regarding the arbitrations, as well as the ties to Libya and the Chinese
12 Communist Party, Chen and HTC neither denied any of the allegations nor provided any
13 evidence to counter these allegations.

14 28. Learning of these allegations was deeply concerning to Plaintiff, who
15 reasonably believed that Chen and HTC fraudulently concealed this information from
16 Surgical Theater in order to induce Surgical Theater into doing business with Chen and
17 HTC.

18 29. Plaintiff reasonably believed that Chen breached his fiduciary duties to
19 Surgical Theater in self-dealing rather than acting in the best interests of Surgical Theater.

20 30. The findings of the Taiwanese arbitrations were material to Surgical Theater
21 because Surgical Theater's business involves the handling and processing of confidential
22 medical records. As a medical device company with strict obligations to comply with
23 regulations from the FDA as well as HIPAA, it was against Surgical Theater's interest to
24 be affiliated with the conduct alleged against Chen and HTC. The allegations that a
25 substantial owner and the Chairman of the Board of Surgical Theater was found to have
26 deliberately cooperated with the theft of data would adversely affect the ability of
27 Surgical Theater to attract and maintain customers.
28

1 31. Surgical Theater had retained a consultant regarding potential business with
2 the Department of Defense, retired general Elder Granger. In August 2022, after learning
3 about the allegations surrounding Chen and HTC regarding the chip backdoor issue,
4 Granger informed Plaintiff that he was cutting all ties with Surgical Theater as long as
5 Surgical Theater remained affiliated with Chen.

6 32. After Plaintiff raised the issue of the Taiwanese arbitrations and the
7 involvement of Chen, HTC, and VIA to the board, Chen and HTC did not deny the
8 allegations. Surgical Theater did not initiate an independent investigation into this issue.

9 33. On July 24, 2022, Plaintiff sent correspondence to Surgical Theater board
10 member Noam Lotan, who was at that time Surgical Theater's designated recipient of
11 whistleblower reports. This correspondence laid out the illegal and inappropriate conduct
12 by Wen-Chi Chen discovered by Plaintiff.

13 34. On July 25, 2022, Plaintiff forwarded the information to the Surgical
14 Theater board.

15 35. Shortly thereafter, during a meeting of the Surgical Theater board of
16 directors, Plaintiff reiterated his concerns regarding HTC and Chen's activities and breach
17 of fiduciary duties.

18 36. On or about September 9, 2022, Plaintiff communicated concerns to the
19 board about the risk that HTC's and Chen's ownership interest in Surgical Theater could
20 trigger investigation or action by the Committee on Foreign Investment in the United
21 States ("CFIUS"). CFIUS is a government entity operating as part of the United States
22 Department of the Treasury, pursuant to section 721 of the Defense Production Act of
23 1950 as amended. CFIUS has authority to investigate and in some cases prohibit certain
24 business transactions involving foreign entities. Plaintiff specifically communicated his
25 concern that HTC may have violated CFIUS requirements with regard to transactions
26 involving Chen and HTC.

27 37. After Plaintiff's complaints, Chen stated that Plaintiff would have to "pay
28 the price" for his complaints and opposition to Chen's self-dealing. Chen also said that

1 Plaintiff “will regret and need to apologize” for his complaints and opposition to Chen’s
2 self-dealing.

3 38. Defendant Surgical Theater terminated Plaintiff’s employment during a
4 board meeting on or around August 13, 2022. In doing so, Defendant Surgical Theater
5 failed to comply with the company’s bylaws, which set forth specific procedures required
6 for termination of the Plaintiff. Specifically, Defendant Surgical Theater was expressly
7 required by the bylaws to provide notice to the shareholders and call a shareholder
8 meeting before voting to terminate Plaintiff’s employment. Defendant failed to do so.

9
10 **FIRST CAUSE OF ACTION**

11 **(Whistleblower Retaliation – Cal. Lab. Code §1102.5**

12 **Against Surgical Theater)**

13 39. Plaintiff realleges and incorporates herein by this reference the allegations
14 of Paragraphs 1 through 38 hereof, inclusive.

15 40. California Labor Code §1102.5 precludes an employer from taking any
16 adverse action against an employee in retaliation for disclosing, to a person with authority,
17 information that the employee has reasonable cause to believe shows a violation of law.

18 41. Here, Plaintiff made direct disclosures to the board of Surgical Theater, as
19 well as to Surgical Theater’s designated recipient of whistleblower complaints, about
20 events he had good reason to believe constituted illegal breaches of fiduciary duty and
21 fraud perpetrated by Wen-Chi Chen and HTC.

22 42. Plaintiff reasonably believed that the conduct he reported to the board of
23 directors constituted illegal breaches of fiduciary duty, and fraud.

24 43. Defendant Surgical Theater terminated Plaintiff mere weeks after Plaintiff’s
25 reports to the board of directors, and after more than 12 years of Plaintiff’s service as
26 CEO of Surgical Theater.

44. Plaintiff believes, and thereon alleges, that Surgical Theater terminated his employment because of Plaintiff's reports to the Board of Directors regarding the activities of board member Wen-Chi Chen and HTC, in violation of California Labor Code §1102.5.

45. As a direct and proximate result of Defendant Surgical Theater's retaliation against Plaintiff, Plaintiff has suffered, and will continue to suffer damages, including but not limited to, lost front wages and lost benefits.

46. At all times described herein, Defendant Surgical Theater has acted willfully and deliberately with oppression, fraud and malice in retaliating against Plaintiff and depriving him of the employment benefits to which he is entitled.

SECOND CAUSE OF ACTION

(Retaliation in Violation of Labor Code §232.5)

Against Surgical Theater)

47. Plaintiff realleges and incorporates herein by this reference the allegations of Paragraphs 1 through 46 hereof, inclusive.

48. California Labor Code §232.5 precludes an employer from retaliating against an employee for the employee's disclosure of information about the working conditions provided by the employer.

49. Here, Plaintiff made direct disclosures to Surgical Theater's board of directors concerning his working conditions – i.e., attempting to perform his role as the CEO of Surgical Theater – while HTC and Chen were attempting to loot the company from the inside; the difficulties caused by Chen's actions reducing revenue and cash flow to the company; and the fact that at least one of Surgical Theater's Department of Defense contacts had cut all ties with the company on the basis of Chen's alleged involvement with the Chinese Communist Party and the VIA chip backdoor issue.

1 50. Almost immediately after raising these concerns, and despite the fact that
2 Plaintiff was the co-founder of and had served as CEO of Surgical Theater for 12 years,
3 Defendant Surgical Theater terminated Plaintiff's employment.

4 51. Plaintiff believes, and thereon alleges, that Defendant Surgical Theater
5 terminated his employment because of Plaintiff's reports to the Board of Directors
6 regarding his working conditions, in violation of California Labor Code §232.5.

7 52. As a direct and proximate result of Defendant Surgical Theater's retaliation
8 against Plaintiff, Plaintiff has suffered, and will continue to suffer damages, including, but
9 not limited to) lost front wages and lost benefits.

10 53. At all times described herein, Defendant Surgical Theater has acted willfully
11 and deliberately with oppression, fraud and malice in retaliating against Plaintiff and
12 depriving him of the employment benefits to which he is entitled.

13
14 **THIRD CAUSE OF ACTION**

15 **(Wrongful Termination in Violation of Public Policy**

16 **Against Surgical Theater)**

17 54. Plaintiff realleges and incorporates herein by this reference the allegations
18 of Paragraphs 1 through 53 hereof, inclusive.

19 55. Defendant Surgical Theater terminated Plaintiff's employment in violation
20 of well-established public policies in California. Specifically, Plaintiff's termination
21 violated California's policy prohibiting employer retaliation against whistleblower
22 employees, as codified in California Labor Code §1102.5 et seq., and California's policy
23 prohibiting employer retaliation against employees who disclose their working conditions,
24 as codified in California Labor Code §232.5.

25 56. As a direct and proximate result of Defendant Surgical Theater's wrongful
26 termination of Plaintiff, Plaintiff has suffered, and will continue to suffer damages,
27 including but not limited to, lost front wages and lost benefits.

1 57. At all times described herein, Defendant Surgical Theater has acted willfully
2 and deliberately with oppression, fraud and malice in retaliating against Plaintiff and
3 depriving him of the employment benefits to which he is entitled.

4
5 **FOURTH CAUSE OF ACTION**

6 **(Intentional Interference with Prospective Economic Relations**

7 **Against Wen-Chi Chen)**

8 58. Plaintiff realleges and incorporates herein by this reference the allegations
9 of Paragraphs 1 through 57 hereof, inclusive.

10 59. Plaintiff had an ongoing employment relationship with Surgical Theater,
11 and had a reasonable expectation and probability of receiving continuing and future
12 economic benefit from his ongoing employment.

13 60. Plaintiff substantially performed his employment obligations.

14 61. Defendant Wen-Chi Chen was, at all times relevant hereto, aware of
15 Plaintiff's employment relationship with Surgical Theater. Chen personally negotiated
16 and approved the compensation packages for Plaintiff's employment.

17 62. As a result of Plaintiff's whistleblowing activities reporting alleged illegal
18 and unethical conduct of Wen-Chi Chen and HTC, Chen, in order to benefit HTC and also
19 himself personally, intentionally caused a disruption of the economic relationship between
20 Plaintiff and Surgical Theater by deliberately inducing Surgical Theater to terminate
21 Plaintiff's employment.

22 63. Chen affirmatively voted to terminate Plaintiff's employment.

23 64. In order to further HTC's business interests, as well as his own personal
24 interests, Chen actively, and personally on behalf of himself and HTC, induced the board
25 members of Surgical Theater to terminate Plaintiff's employment, by, among other things:

- 26 a. Telling board members that Chen and HTC would stop funding Surgical
27 Theater if Plaintiff did not stop reporting Chen/HTC's wrongdoings and
28 conflicts of interest;

- b. Creating a cash crisis by breaching previous funding promises, and then misrepresenting to Surgical Theater board members that payroll problems were Plaintiff's fault, when in fact what Plaintiff did was refuse to accept a predatory loan from HTC;
- c. Attempting to prevent Plaintiff from speaking at a Surgical Theater board meeting that Plaintiff himself initiated to discuss the Hong Kong/Taiwan arbitration issue with the board;
- d. Insisting to the Surgical Theater board that the Hong Kong/Taiwan arbitration issue was a "personal" matter between Chen and Plaintiff, and, on information and belief, giving the board an ultimatum that if the board did not terminate Plaintiff's employment, HTC and/or Kun Hung would pull funding from Surgical Theater; and
- e. While Avisar was still employed at Surgical Theater, Chen instructed the Board of Directors to retain an attorney in order to file Chapter 11 bankruptcy, ostensibly as a result of the cash shortage that Chen himself had created. Chen used this deliberately-created crisis to pressure board members to terminate Plaintiff. After Plaintiff was terminated, Chen then offered to provide additional cash as part of the Convertible Loan Agreement described in more detail below.

65. During board meetings, and while committing the conduct noted above, Chen repeatedly and expressly disclaimed his role and duties as Surgical Theater's chairman, and expressed that he was instead concerned about HTC's interests.

66. Chen's conduct in inducing Surgical Theater to terminate Plaintiff's employment was independently wrongful. Specifically:

- a. Defendant Chen breached his fiduciary duties and duty of loyalty as the Chairman and a board member of Surgical Theater by voting to terminate Plaintiff's employment, and by inducing Surgical Theater to terminate Plaintiff's employment, as this action was designed to remove Plaintiff as an

1 impediment to the Chen's ongoing campaign of sabotage of Surgical
2 Theater for Chen and HTC's benefit.

- 3 b. Defendant Chen's inducement of Surgical Theater to terminate Plaintiff's
4 employment constituted ongoing fraud on Surgical Theater, through an
5 attempt to continue concealing HTC's and Chen's misconduct from Surgical
6 Theater shareholders. The conduct that Chen sought to conceal by inducing
7 the termination of Plaintiff included: 1) Chen's and HTC's ties to the
8 Chinese Communist Party; 2) alleged activity by HTC and VIA related to
9 the illicit access to information; 3) HTC's alleged ties to Libya; 4) Chen and
10 HTC's failure to execute its obligations to promote and sell Surgical Theater
11 products under the exclusive distribution agreement awarded to HTC by
12 Surgical Theater; and 5) continued self-dealing by Chen and HTC. For
13 instance, Chen, acting through his personal money management firm, Kun
14 Hung, entered into a Convertible Loan Agreement ("CLA") with Surgical
15 Theater. Despite the fact that the CLA contains an equity conversion
16 provision, the agreement also requires Surgical Theater to record three times
17 the actual loan amount as being owed to Kun Hung. Surgical Theater has to
18 date drawn \$6 million from the CLA, and is required to record a debt of \$18
19 million, to the detriment of Surgical Theater shareholders. Defendant Chen
20 deliberately withheld from shareholders that Kun Hung is a captive entity
21 that benefits Chen directly and personally; and has deliberately concealed
22 his conflict of interest from the shareholders, as well as the fact that
23 Defendant Chen is personally receiving a substantial and non-customary
24 financial gain from the CLA deal.
- 25 c. Defendant Chen induced the termination of Plaintiff specifically to facilitate
26 improper self-dealing to benefit Chen at the expense of Surgical Theater
27 shareholders. For example, Plaintiff repeatedly rejected Defendant Chen's
28 offers for transactions with unfavorable terms similar to the loan described

above, given the unfavorable terms to Surgical Theater and the cost to Surgical Theater shareholders. Defendant Chen induced the board of Surgical Theater to terminate Plaintiff in order to get the loan approved.

67. At all times described herein, Chen acted willfully and deliberately with oppression, fraud and malice in disrupting Plaintiff's employment relationship with Surgical Theater, and depriving Plaintiff of the compensation and benefits to which he was entitled pursuant to such relationship.

FIFTH CAUSE OF ACTION

(Conversion

Against Surgical Theater)

68. Plaintiff realleges and incorporates herein by this reference the allegations of Paragraphs 1 through 67 hereof, inclusive.

69. During the course of his employment, Plaintiff resided for a period of time in housing owned by Defendant Surgical Theater.

70. During his period of residence, Plaintiff maintained personal possessions in that housing with a total value of at least \$48,000. This property consisted of, inter alia, clothing, jewelry, personal effects, recording equipment, and other items.

71. Defendant Surgical Theater ceased maintaining the housing unit for its employees, and moved Plaintiff's personal property to a storage unit owned by Surgical Theater.

72. When Surgical Theater terminated Plaintiff's employment, the company also terminated the storage unit lease, but sent only a small portion of Plaintiff's belongings back to him. The vast majority, and the more valuable, of Plaintiff's property that had been housed in the storage unit was not returned to Plaintiff and was nowhere to be found.

73. Plaintiff's multiple inquiries to Defendant Surgical Theater as to the whereabouts of his property were met with silence.

1 74. Plaintiff at all times relevant herein had a property right to the personal
2 property identified herein.

3 75. Defendant Surgical Theater does not have, and at no time had, any property
4 interest in the personal property of the Plaintiff identified herein.

5 76. Defendant Surgical Theater intentionally and substantially interfered with
6 Plaintiff's property by misappropriating the property for its own use and benefit,
7 preventing Plaintiff from having access to the property, and refusing to return the property
8 to Plaintiff.

9 77. Plaintiff did not consent in any manner to Surgical Theater taking his
10 personal property for Surgical Theater's own use, or to Surgical Theater's disposing of his
11 personal property in any other fashion.

12 78. Defendant Surgical Theater has not returned the property to Plaintiff, nor
13 has Surgical Theater provided Plaintiff with any funds as recompense for the property
14 Surgical Theater converted from Plaintiff.

15 79. Plaintiff has been damaged in amount to be proven at trial, as a direct and
16 proximate result of Defendant Surgical Theater's actions in converting and
17 misappropriating his personal property.

18
19 **SIXTH CAUSE OF ACTION**

20 **(Violation of Penal Code §496**

21 **Against Surgical Theater)**

22 80. Plaintiff realleges and incorporates herein by this reference the allegations
23 of Paragraphs 1 through 79 hereof, inclusive.

24 81. California Penal Code §496(c) provides that "any person who has been
25 injured by a violation" of Penal Code §496(a) may bring an action for three times the
26 amount of actual damages, costs of suit, and reasonable attorneys' fees.

1 82. Section 496(a) prohibits individuals from concealing, selling, withholding
2 or aiding in concealing, selling, or withholding any property from the owner of the
3 property, where such property was stolen or unlawfully obtained from the owner.

4 83. Defendant Surgical Theater violated section 496(a) by knowingly
5 concealing and withholding Plaintiff's personal property from him, after having
6 unlawfully misappropriated that property.

7 84. Plaintiff has been injured by Defendant Surgical Theater's violation of
8 Penal Code §496(a) in an amount to be determined at trial, but in no event less than
9 \$48,000 plus interest at the legal rate. Accordingly, Plaintiff is entitled to treble damages,
10 costs of suit, and reasonable attorneys' fees pursuant to section 496(c).

11
12 **SEVENTH CAUSE OF ACTION**

13 **(Breach of Bailment**

14 **Against Surgical Theater)**

15 85. Plaintiff realleges and incorporates herein by this reference the allegations
16 of Paragraphs 1 through 84 hereof, inclusive.

17 86. Defendant Surgical Theater, by deliberately taking possession of Plaintiff's
18 personal property as described herein and placing it into Surgical Theater's storage unit,
19 became a bailor of Plaintiff's property.

20 87. As a result of this bailment, Defendant Surgical Theater owed a duty to
21 Plaintiff to exercise ordinary care in maintaining Plaintiff's property.

22 88. Defendant Surgical Theater breached this duty and instead misappropriated
23 or disposed of Plaintiff's property, interfering with Plaintiff's enjoyment and use of his
24 own property and preventing Plaintiff from regaining his property.

25 89. Defendant Surgical Theater's breach of this duty proximately caused
26 damages to Plaintiff in an amount not less than \$48,000.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants Surgical Theater, Inc., Wen-Chi Chen and DOES 1 through 10, inclusive, and each of them, as follows:

ON THE FIRST CAUSE OF ACTION:

1. For damages according to proof, including front pay and benefits;
2. For attorney fees and costs reasonably incurred, in accordance with California Labor Code §1102.5(j);
3. For interest pursuant to Civil Code §3287; and
4. For punitive damages.

ON THE SECOND CAUSE OF ACTION:

1. For damages according to proof, including front pay and benefits;
2. For interest pursuant to Civil Code §3287; and
3. For punitive damages.

ON THE THIRD CAUSE OF ACTION:

1. For damages according to proof, including front pay and benefits;
2. For interest pursuant to Civil Code §3287; and
3. For punitive damages.

ON THE FOURTH CAUSE OF ACTION:

1. For damages according to proof, including front pay and benefits;
2. For interest pursuant to Civil Code §3287; and
3. For punitive damages.

ON THE FIFTH CAUSE OF ACTION:

1. For damages according to proof; and
2. For interest pursuant to Civil Code §3287.

1 **ON THE SIXTH CAUSE OF ACTION:**

- 2 1. For damages according to proof;
3 2. For treble damages pursuant to Penal Code §496(c);
4 3. For attorney fees and costs, in accordance with Penal Code 496(c); and
5 4. For interest pursuant to Civil Code §3287.

6 **ON THE SEVENTH CAUSE OF ACTION:**

- 7 1. For damages according to proof; and
8 2. For interest pursuant to Civil Code §3287.

9 **ON ALL CAUSES OF ACTION:**

- 10 1. For costs of suit, to the extent not otherwise prayed for above;
11 2. For attorney fees to the extent not otherwise prayed for above;
12 3. For interest on amounts recoverable; and
13 4. For such other and further relief as this Court deems just and proper.

14
15 **DEMAND FOR JURY TRIAL**

16 Plaintiff hereby demands a jury trial.

17
18
19 DATED: June 12, 2023

THE GRAVES FIRM

20
21 By: _____


ALLEN GRAVES

22 Attorney for Plaintiff
23 Mordechai Avisar
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